SBCivil Writ Petition No.5890/2005

Shiv Bhagwan & Ors.
V.
The District Judge, Churu & Ors.

Date of Order :: 6th January, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Manish Sisodia, for the petitioners.
Mr. Asgar Khan, for the respondents.

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This writ petition came up for orders on an application preferred by respondent Bajrang Lal Swami for vacation of interim order dated 29.9.2005.

With the consent of parties the writ petition is heard for final disposal.

The writ petition is directed against the order dated 20.9.2005 passed by learned District Judge, Churu directing to Civil Judge (JD), Taranagar to make inspection of the disputed site in presence of counsel for parties and to submit inspection report.

In the writ petition it is contended by the petitioners that the application outcome of which is the order dated 20.9.2005 was preferred under Order 26 Rule 9 CPC for appointment of Commissioner for making local investigation. The notice issued on the application was served upon the petitioners and their counsel put in appearance before the court on 20.9.2005, but without affording any opportunity to

him for filing reply to the application the order impugned was passed by the court below.

It is contended by counsel for respondent Shri Asgar Khan that in fact the application preferred by the plaintiff was not under Order 26 Rule 9 CPC but was an application under Order 39 Rule 7 CPC for inspection of the disputed site. It is also stated that in pursuant to the order dated 20.9.2005 learned Civil Judge (JD) inspected the site on 27.9.2005 and has already submitted its report to the court of learned District Judge, Churu. A copy of the inspection report is also placed on record alongwith the application under Article 226(3) of the Constitution of India.

Looking to the facts that the application submitted by the plaintiff under Order 39 Rule 7 CPC was disposed of in presence of counsel for present petitioners and an opportunity was also given to him to remain present at the time of inspection and thereafter the Civil Judge (JD) Taranagar has already inspected the site and submitted its report to the District Judge, Churu, I do not consider appropriate to interfere with the order impugned at this stage. It is also open for the petitioners to raise all possible objections which are legally available to them with regard to inspection report submitted by learned Civil Judge (JD) Taranagar.

In view of whatever stated above, no case is made out warranting interference of this Court under Article 227 of the Constitution of India, therefore, the petition for writ is dismissed.

(GOVIND MATHUR),J.

kkm/ps.